

REMARKS

This amendment is submitted in response to the Office Action mailed June 5, 2008. In that Office Action, the Examiner stated that in Applicant's submission dated March 5, 2008, "applicant . . . included limitations into the independent claims which do not read on the elected species (Figures 1-3)" and therefore deemed Applicant's submission to be "not fully responsive" to the prior Office Action dated December 10, 2007. In particular, the Examiner objected to Applicant's inclusion in claim 35 that "the at least one marking effector is separate from the at least one therapeutic substance delivery effector" and inclusion in claim 52 that "the at least one marking effector is separate from . . . the at least one therapeutic substance delivery effector." Applicant respectfully submits that those recitations do read on the elected species and subspecies and that its March 5, 2008 submission is fully responsive to the Examiner's December 10, 2007 Office Action.

In particular, Applicant respectfully submits that Applicant's May 12, 2003 election of Species I and Sub-Species A in response to the former examiner's April 7, 2003 restriction requirement did not reflect a decision to not pursue claims directed to embodiments comprising "at least one marking effector . . . separate from . . . at least one therapeutic substance delivery effector." Indeed, that restriction requirement did not require Applicant to choose between embodiments having a marking effector separate from a therapeutic substance delivery effector and those having a single effector serving as both a marking effector and a therapeutic substance delivery effector. Instead, each of the species and subspecies listed by the former examiner could encompass both embodiments. In particular, Applicant directs the Examiner's attention, *inter alia*, to the discussion of the various treatment effectors at page 13, lines 3-22 and page 16, lines 11-14 of the specification as filed, wherein Applicant explains that a marking effector can be separate from a therapeutic substance delivery effector. This discussion is independent of any reference to any particular figures and therefore is independent of any particular species or subspecies identified by the former examiner. Rather, having a marking effector separate from a therapeutic substance delivery effector is equally possible in any of the former examiner's species and subspecies.

As further support for this fact, Applicant notes that none of the figures cited to by the former examiner in the April 7, 2003 restriction requirement, whether those corresponding to the elected species and subspecies or those corresponding to unelected species and subspecies, explicitly depicts a marking effector separate from a therapeutic substance

delivery effector. Because the former examiner requested an election that involved a selection of figures, for this additional reason, Applicant could not possibly have elected a species on which the recitations at issue fail to read.

If the Examiner disagrees with Applicant's arguments herein, Applicant respectfully asks that the Examiner identify the species and subspecies, set forth in the April 7, 2003 restriction requirement, on which the Applicant's proposed amended claims 35 and 52 read.

If the Examiner accepts Applicant's arguments herein but believes that drawings are required pursuant to 37 C.F.R. §§ 1.81(c) and 1.83, Applicant will furnish such drawings. However, Applicant respectfully submits that such drawings are not required for the Examiner to consider Applicant's March 5, 2008 submission and therefore respectfully requests that the Examiner enter the amendments and consider the arguments therein prior to the submission of any additional or amended drawings.

CONCLUSION

Because Applicant's amendments in its submission dated March 5, 2008 did not include recitations in the independent claims that fail to read on the elected species and were therefore fully responsive, Applicant respectfully requests that the Examiner consider Applicant's March 5, 2008 submission. Should the Examiner not agree with any of Applicants' positions or arguments herein or in Applicant's March 5, 2008 submission, a telephonic or personal interview is respectfully requested to discuss and resolve any remaining issues.

No fee is believed due for this response. Should any fee(s) be due at this time, please charge such fee(s) to Jones Day Deposit Acct. No. 50-3013.

Respectfully submitted,

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